

AMENDED IN SENATE APRIL 28, 2009

**SENATE BILL**

**No. 399**

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**Introduced by Senator Yee**

February 26, 2009

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An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings or both may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would establish criteria to be used by the secretary or the board for determining if a prisoner's sentence should be ~~recalled~~ *recommended for recall and resentencing* when the ~~defendant prisoner~~ *prisoner* was under 18 years of age at the time of committing an offense for which the ~~defendant prisoner~~ *prisoner* was sentenced to life without parole. The bill would ~~establish a procedure for reviewing those sentences and~~ *would* apply retroactively, *as specified*.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1170 of the Penal Code, as amended by
- 2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
- 3 read:

1 1170. (a) (1) The Legislature finds and declares that the  
2 purpose of imprisonment for crime is punishment. This purpose  
3 is best served by terms proportionate to the seriousness of the  
4 offense with provision for uniformity in the sentences of offenders  
5 committing the same offense under similar circumstances. The  
6 Legislature further finds and declares that the elimination of  
7 disparity and the provision of uniformity of sentences can best be  
8 achieved by determinate sentences fixed by statute in proportion  
9 to the seriousness of the offense as determined by the Legislature  
10 to be imposed by the court with specified discretion.

11 (2) Notwithstanding paragraph (1), the Legislature further finds  
12 and declares that programs should be available for inmates,  
13 including, but not limited to, educational programs, that are  
14 designed to prepare nonviolent felony offenders for successful  
15 reentry into the community. The Legislature encourages the  
16 development of policies and programs designed to educate and  
17 rehabilitate nonviolent felony offenders. In implementing this  
18 section, the Department of Corrections and Rehabilitation is  
19 encouraged to give priority enrollment in programs to promote  
20 successful return to the community to an inmate with a short  
21 remaining term of commitment and a release date that would allow  
22 him or her adequate time to complete the program.

23 (3) In any case in which the punishment prescribed by statute  
24 for a person convicted of a public offense is a term of imprisonment  
25 in the state prison of any specification of three time periods, the  
26 court shall sentence the defendant to one of the terms of  
27 imprisonment specified unless the convicted person is given any  
28 other disposition provided by law, including a fine, jail, probation,  
29 or the suspension of imposition or execution of sentence or is  
30 sentenced pursuant to subdivision (b) of Section 1168 because he  
31 or she had committed his or her crime prior to July 1, 1977. In  
32 sentencing the convicted person, the court shall apply the  
33 sentencing rules of the Judicial Council. The court, unless it  
34 determines that there are circumstances in mitigation of the  
35 punishment prescribed, shall also impose any other term that it is  
36 required by law to impose as an additional term. Nothing in this  
37 article shall affect any provision of law that imposes the death  
38 penalty, that authorizes or restricts the granting of probation or  
39 suspending the execution or imposition of sentence, or expressly  
40 provides for imprisonment in the state prison for life, except as

1 provided in subdivision (e). In any case in which the amount of  
2 preimprisonment credit under Section 2900.5 or any other provision  
3 of law is equal to or exceeds any sentence imposed pursuant to  
4 this chapter, the entire sentence shall be deemed to have been  
5 served and the defendant shall not be actually delivered to the  
6 custody of the secretary. The court shall advise the defendant that  
7 he or she shall serve a period of parole and order the defendant to  
8 report to the parole office closest to the defendant's last legal  
9 residence, unless the in-custody credits equal the total sentence,  
10 including both confinement time and the period of parole. The  
11 sentence shall be deemed a separate prior prison term under Section  
12 667.5, and a copy of the judgment and other necessary  
13 documentation shall be forwarded to the secretary.

14 (b) When a judgment of imprisonment is to be imposed and the  
15 statute specifies three possible terms, the choice of the appropriate  
16 term shall rest within the sound discretion of the court. At least  
17 four days prior to the time set for imposition of judgment, either  
18 party or the victim, or the family of the victim if the victim is  
19 deceased, may submit a statement in aggravation or mitigation. In  
20 determining the appropriate term, the court may consider the record  
21 in the case, the probation officer's report, other reports including  
22 reports received pursuant to Section 1203.03 and statements in  
23 aggravation or mitigation submitted by the prosecution, the  
24 defendant, or the victim, or the family of the victim if the victim  
25 is deceased, and any further evidence introduced at the sentencing  
26 hearing. The court shall select the term which, in the court's  
27 discretion, best serves the interests of justice. The court shall set  
28 forth on the record the reasons for imposing the term selected and  
29 the court may not impose an upper term by using the fact of any  
30 enhancement upon which sentence is imposed under any provision  
31 of law. A term of imprisonment shall not be specified if imposition  
32 of sentence is suspended.

33 (c) The court shall state the reasons for its sentence choice on  
34 the record at the time of sentencing. The court shall also inform  
35 the defendant that as part of the sentence after expiration of the  
36 term he or she may be on parole for a period as provided in Section  
37 3000.

38 (d) When a defendant subject to this section or subdivision (b)  
39 of Section 1168 has been sentenced to be imprisoned in the state  
40 prison and has been committed to the custody of the secretary, the

1 court may, within 120 days of the date of commitment on its own  
2 motion, or at any time upon the recommendation of the secretary  
3 or the Board of Parole Hearings, recall the sentence and  
4 commitment previously ordered and resentence the defendant in  
5 the same manner as if he or she had not previously been sentenced,  
6 provided the new sentence, if any, is no greater than the initial  
7 sentence. The resentence under this subdivision shall apply the  
8 sentencing rules of the Judicial Council so as to eliminate disparity  
9 of sentences and to promote uniformity of sentencing. Credit shall  
10 be given for time served.

11 (e) (1) When a defendant who was under 18 years of age at the  
12 time of the commission of the offense for which the defendant was  
13 sentenced to imprisonment for life without the possibility of parole  
14 has been committed to the custody of the Department of  
15 Corrections and Rehabilitation, the secretary of the department or  
16 the Board of Parole Hearings shall review the case no later than  
17 90 days before the time that the defendant has served 10 years to  
18 determine if the defendant satisfies three or more of the criteria  
19 set forth in paragraph (2). *Defendants who have served 15 or more*  
20 *years but less than 25 years as of January 1, 2010, shall be*  
21 *reviewed so that at least 20 defendants have their initial review*  
22 *each year until all of those who have served more than 15 years*  
23 *but less than 25 years are reviewed, starting with those who have*  
24 *served the longest time. Those who have served less than 15 years*  
25 *as of January 1, 2010, shall have their initial reviews as otherwise*  
26 *set forth in this section.* The secretary or the board shall consider  
27 any documentation relevant to that determination, including  
28 documentation presented by the defendant, and shall issue written  
29 findings not later than 90 days after the date of review.

30 (2) If the secretary or the board finds, based on a preponderance  
31 of the evidence, that the defendant satisfies three or more of the  
32 following criteria, that finding shall be forwarded to the sentencing  
33 court, which shall conduct a hearing as specified in paragraph (3):

34 (A) The defendant was convicted pursuant to felony murder or  
35 aiding and abetting murder provisions of law.

36 (B) The defendant does not have juvenile felony adjudications  
37 for assault or other felony crimes with a significant potential for  
38 personal harm to victims prior to the offense for which the sentence  
39 is being considered for recall.

1 (C) The defendant committed the offense with at least one adult  
2 codefendant.

3 (D) Prior to the offense for which the sentence is being  
4 considered for recall, the defendant had insufficient adult support  
5 or supervision and had suffered from psychological or physical  
6 trauma, or significant stress.

7 (E) The defendant suffers from cognitive limitations due to  
8 mental illness, developmental disabilities, or other factors that did  
9 not constitute a defense, but influenced the defendant's  
10 involvement in the offense.

11 (F) The defendant has performed acts that tend to indicate  
12 rehabilitation or the potential for rehabilitation, including, but not  
13 limited to, availing himself or herself of rehabilitative, educational,  
14 or vocational programs, if those programs have been available at  
15 his or her classification level and facility, using self-study for  
16 self-improvement, or taking action that demonstrates the presence  
17 of remorse.

18 (G) The defendant has maintained family ties or connections  
19 with others through letter writing, calls, or visits, or has eliminated  
20 contact with individuals outside of prison who are currently  
21 involved with crime.

22 (H) The defendant has had no violent disciplinary violations in  
23 the last five years in which the defendant was determined to be  
24 the aggressor.

25 (3) The court shall have the discretion to recall the sentence and  
26 commitment previously ordered and to resentence the defendant  
27 in the same manner as if the defendant had not previously been  
28 sentenced, provided that the new sentence, if any, is not greater  
29 than the initial sentence. The discretion of the court shall be  
30 exercised in consideration of the criteria in paragraph (2). Victims,  
31 or victim family members if the victim is deceased, shall be notified  
32 of the resentencing hearing and shall retain their rights to  
33 participate in the hearing.

34 (4) If the sentence is not recalled, the board shall make the  
35 determination mandated by subdivision (a) again when the  
36 defendant has been committed to the custody of the department  
37 for 15 years, 20 years, and 24 years. The final review shall be  
38 during the 24th year of the defendant's sentence.

39 (5) In addition to the criteria in paragraph (2), the court may  
40 consider any other criteria that the court deems relevant to its

1 decision, so long as the court identifies them on the record,  
2 provides a statement of reasons for adopting them, and states why  
3 the defendant does or does not satisfy the criteria.

4 (6) This subdivision shall have retroactive application.

5 (f) (1) Notwithstanding any other law and consistent with  
6 paragraph (1) of subdivision (a), if the secretary or the Board of  
7 Parole Hearings or both determine that a prisoner satisfies the  
8 criteria set forth in paragraph (2), the secretary or the board may  
9 recommend to the court that the prisoner's sentence be recalled.

10 (2) The court shall have the discretion to resentence or recall if  
11 the court finds that the facts described in subparagraph (A) and  
12 (B) or subparagraphs (B) and (C) exist:

13 (A) The prisoner is terminally ill with an incurable condition  
14 caused by an illness or disease that would produce death within  
15 six months, as determined by a physician employed by the  
16 department.

17 (B) The conditions under which the prisoner would be released  
18 or receive treatment do not pose a threat to public safety.

19 (C) The prisoner is permanently medically incapacitated with  
20 a medical condition that renders him or her permanently unable  
21 to perform activities of basic daily living, and results in the prisoner  
22 requiring 24-hour total care, including, but not limited to, coma,  
23 persistent vegetative state, brain death, ventilator-dependency, loss  
24 of control of muscular or neurological function, and that  
25 incapacitation did not exist at the time of the original sentencing.

26 The Board of Parole Hearings shall make findings pursuant to  
27 this subdivision before making a recommendation for resentence  
28 or recall to the court. This subdivision does not apply to a prisoner  
29 sentenced to death or a term of life without the possibility of parole.

30 (3) Within 10 days of receipt of a positive recommendation by  
31 the secretary or the board, the court shall hold a hearing to consider  
32 whether the prisoner's sentence should be recalled.

33 (4) Any physician employed by the department who determines  
34 that a prisoner has six months or less to live shall notify the chief  
35 medical officer of the prognosis. If the chief medical officer  
36 concurs with the prognosis, he or she shall notify the warden.  
37 Within 48 hours of receiving notification, the warden or the  
38 warden's representative shall notify the prisoner of the recall and  
39 resentencing procedures, and shall arrange for the prisoner to  
40 designate a family member or other outside agent to be notified

1 as to the prisoner's medical condition and prognosis, and as to the  
2 recall and resentencing procedures. If the inmate is deemed  
3 mentally unfit, the warden or the warden's representative shall  
4 contact the inmate's emergency contact and provide the information  
5 described in paragraph (2).

6 (5) The warden or the warden's representative shall provide the  
7 prisoner and his or her family member, agent, or emergency  
8 contact, as described in paragraph (4), updated information  
9 throughout the recall and resentencing process with regard to the  
10 prisoner's medical condition and the status of the prisoner's recall  
11 and resentencing proceedings.

12 (6) Notwithstanding any other provisions of this section, the  
13 prisoner or his or her family member or designee may  
14 independently request consideration for recall and resentencing  
15 by contacting the chief medical officer at the prison or the  
16 secretary. Upon receipt of the request, the chief medical officer  
17 and the warden or the warden's representative shall follow the  
18 procedures described in paragraph (4). If the secretary determines  
19 that the prisoner satisfies the criteria set forth in paragraph (2), the  
20 secretary or board may recommend to the court that the prisoner's  
21 sentence be recalled. The secretary shall submit a recommendation  
22 for release within 30 days in the case of inmates sentenced to  
23 determinate terms and, in the case of inmates sentenced to  
24 indeterminate terms, the secretary shall make a recommendation  
25 to the Board of Parole Hearings with respect to the inmates who  
26 have applied under this section. The board shall consider this  
27 information and make an independent judgment pursuant to  
28 paragraph (2) and make findings related thereto before rejecting  
29 the request or making a recommendation to the court. This action  
30 shall be taken at the next lawfully noticed board meeting.

31 (7) Any recommendation for recall submitted to the court by  
32 the secretary or the Board of Parole Hearings shall include one or  
33 more medical evaluations, a postrelease plan, and findings pursuant  
34 to paragraph (2).

35 (8) If possible, the matter shall be heard before the same judge  
36 of the court who sentenced the prisoner.

37 (9) If the court grants the recall and resentencing application,  
38 the prisoner shall be released by the department within 48 hours  
39 of receipt of the court's order, unless a longer time period is agreed  
40 to by the inmate. At the time of release, the warden or the warden's

1 representative shall ensure that the prisoner has each of the  
2 following in his or her possession: a discharge medical summary,  
3 full medical records, state identification, parole medications, and  
4 all property belonging to the prisoner. After discharge, any  
5 additional records shall be sent to the prisoner's forwarding  
6 address.

7 (10) The secretary shall issue a directive to medical and  
8 correctional staff employed by the department that details the  
9 guidelines and procedures for initiating a recall and resentencing  
10 procedure. The directive shall clearly state that any prisoner who  
11 is given a prognosis of six months or less to live is eligible for  
12 recall and resentencing consideration, and that recall and  
13 resentencing procedures shall be initiated upon that prognosis.

14 (g) Any sentence imposed under this article shall be subject to  
15 the provisions of Sections 3000 and 3057 and any other applicable  
16 provisions of law.

17 (h) A sentence to state prison for a determinate term for which  
18 only one term is specified, is a sentence to state prison under this  
19 section.

20 (i) This section shall remain in effect only until January 1, 2011,  
21 and as of that date is repealed, unless a later enacted statute, that  
22 is enacted before that date, deletes or extends that date.

23 SEC. 2. Section 1170 of the Penal Code, as amended by Section  
24 2 of Chapter 416 of the Statutes of 2008, is amended to read:

25 1170. (a) (1) The Legislature finds and declares that the  
26 purpose of imprisonment for crime is punishment. This purpose  
27 is best served by terms proportionate to the seriousness of the  
28 offense with provision for uniformity in the sentences of offenders  
29 committing the same offense under similar circumstances. The  
30 Legislature further finds and declares that the elimination of  
31 disparity and the provision of uniformity of sentences can best be  
32 achieved by determinate sentences fixed by statute in proportion  
33 to the seriousness of the offense as determined by the Legislature  
34 to be imposed by the court with specified discretion.

35 (2) Notwithstanding paragraph (1), the Legislature further finds  
36 and declares that programs should be available for inmates,  
37 including, but not limited to, educational programs, that are  
38 designed to prepare nonviolent felony offenders for successful  
39 reentry into the community. The Legislature encourages the  
40 development of policies and programs designed to educate and

1 rehabilitate nonviolent felony offenders. In implementing this  
2 section, the Department of Corrections and Rehabilitation is  
3 encouraged to give priority enrollment in programs to promote  
4 successful return to the community to an inmate with a short  
5 remaining term of commitment and a release date that would allow  
6 him or her adequate time to complete the program.

7 (3) In any case in which the punishment prescribed by statute  
8 for a person convicted of a public offense is a term of imprisonment  
9 in the state prison of any specification of three time periods, the  
10 court shall sentence the defendant to one of the terms of  
11 imprisonment specified unless the convicted person is given any  
12 other disposition provided by law, including a fine, jail, probation,  
13 or the suspension of imposition or execution of sentence or is  
14 sentenced pursuant to subdivision (b) of Section 1168 because he  
15 or she had committed his or her crime prior to July 1, 1977. In  
16 sentencing the convicted person, the court shall apply the  
17 sentencing rules of the Judicial Council. The court, unless it  
18 determines that there are circumstances in mitigation of the  
19 punishment prescribed, shall also impose any other term that it is  
20 required by law to impose as an additional term. Nothing in this  
21 article shall affect any provision of law that imposes the death  
22 penalty, that authorizes or restricts the granting of probation or  
23 suspending the execution or imposition of sentence, or expressly  
24 provides for imprisonment in the state prison for life, except as  
25 provided in subdivision (e). In any case in which the amount of  
26 preimprisonment credit under Section 2900.5 or any other provision  
27 of law is equal to or exceeds any sentence imposed pursuant to  
28 this chapter, the entire sentence shall be deemed to have been  
29 served and the defendant shall not be actually delivered to the  
30 custody of the secretary. The court shall advise the defendant that  
31 he or she shall serve a period of parole and order the defendant to  
32 report to the parole office closest to the defendant's last legal  
33 residence, unless the in-custody credits equal the total sentence,  
34 including both confinement time and the period of parole. The  
35 sentence shall be deemed a separate prior prison term under Section  
36 667.5, and a copy of the judgment and other necessary  
37 documentation shall be forwarded to the secretary.

38 (b) When a judgment of imprisonment is to be imposed and the  
39 statute specifies three possible terms, the court shall order  
40 imposition of the middle term, unless there are circumstances in

1 aggravation or mitigation of the crime. At least four days prior to  
2 the time set for imposition of judgment, either party or the victim,  
3 or the family of the victim if the victim is deceased, may submit  
4 a statement in aggravation or mitigation to dispute facts in the  
5 record or the probation officer's report, or to present additional  
6 facts. In determining whether there are circumstances that justify  
7 imposition of the upper or lower term, the court may consider the  
8 record in the case, the probation officer's report, other reports  
9 including reports received pursuant to Section 1203.03 and  
10 statements in aggravation or mitigation submitted by the  
11 prosecution, the defendant, or the victim, or the family of the victim  
12 if the victim is deceased, and any further evidence introduced at  
13 the sentencing hearing. The court shall set forth on the record the  
14 facts and reasons for imposing the upper or lower term. The court  
15 may not impose an upper term by using the fact of any  
16 enhancement upon which sentence is imposed under any provision  
17 of law. A term of imprisonment shall not be specified if imposition  
18 of sentence is suspended.

19 (c) The court shall state the reasons for its sentence choice on  
20 the record at the time of sentencing. The court shall also inform  
21 the defendant that as part of the sentence after expiration of the  
22 term he or she may be on parole for a period as provided in Section  
23 3000.

24 (d) When a defendant subject to this section or subdivision (b)  
25 of Section 1168 has been sentenced to be imprisoned in the state  
26 prison and has been committed to the custody of the secretary, the  
27 court may, within 120 days of the date of commitment on its own  
28 motion, or at any time upon the recommendation of the secretary  
29 or the Board of Parole Hearings, recall the sentence and  
30 commitment previously ordered and resentence the defendant in  
31 the same manner as if he or she had not previously been sentenced,  
32 provided the new sentence, if any, is no greater than the initial  
33 sentence. The resentence under this subdivision shall apply the  
34 sentencing rules of the Judicial Council so as to eliminate disparity  
35 of sentences and to promote uniformity of sentencing. Credit shall  
36 be given for time served.

37 (e) (1) When a defendant who was under 18 years of age at the  
38 time of the commission of the offense for which the defendant was  
39 sentenced to imprisonment for life without the possibility of parole  
40 has been committed to the custody of the Department of

1 Corrections and Rehabilitation, the secretary of the department or  
2 the Board of Parole Hearings shall review the case no later than  
3 90 days before the time that the defendant has served 10 years to  
4 determine if the defendant satisfies three or more of the criteria  
5 set forth in paragraph (2). *Defendants who have served 15 or more*  
6 *years but less than 25 years as of January 1, 2010, shall be*  
7 *reviewed so that at least 20 defendants have their initial review*  
8 *each year until all of those who have served more than 15 years*  
9 *but less than 25 years are reviewed, starting with those who have*  
10 *served the longest time. Those who have served less than 15 years*  
11 *as of January 1, 2010, shall have their initial reviews as otherwise*  
12 *set forth in this section.* The secretary or the board shall consider  
13 any documentation relevant to that determination, including  
14 documentation presented by the defendant, and shall issue written  
15 findings not later than 90 days after the date of review.

16 (2) If the secretary or the board finds, based on a preponderance  
17 of the evidence, that the defendant satisfies three or more of the  
18 following criteria, that finding shall be forwarded to the sentencing  
19 court, which shall conduct a hearing as specified in paragraph (3):

20 (A) The defendant was convicted pursuant to felony murder or  
21 aiding and abetting murder provisions of law.

22 (B) The defendant does not have juvenile felony adjudications  
23 for assault or other felony crimes with a significant potential for  
24 personal harm to victims prior to the offense for which the sentence  
25 is being considered for recall.

26 (C) The defendant committed the offense with at least one adult  
27 codefendant.

28 (D) Prior to the offense for which the sentence is being  
29 considered for recall, the defendant had insufficient adult support  
30 or supervision and had suffered from psychological or physical  
31 trauma, or significant stress.

32 (E) The defendant suffers from cognitive limitations due to  
33 mental illness, developmental disabilities, or other factors that did  
34 not constitute a defense, but influenced the defendant's  
35 involvement in the offense.

36 (F) The defendant has performed acts that tend to indicate  
37 rehabilitation or the potential for rehabilitation, including, but not  
38 limited to, availing himself or herself of rehabilitative, educational,  
39 or vocational programs, if those programs have been available at  
40 his or her classification level and facility, using self-study for

1 self-improvement, or taking action that demonstrates the presence  
2 of remorse.

3 (G) The defendant has maintained family ties or connections  
4 with others through letter writing, calls, or visits, or has eliminated  
5 contact with individuals outside of prison who are currently  
6 involved with crime.

7 (H) The defendant has had no violent disciplinary violations in  
8 the last five years in which the defendant was determined to be  
9 the aggressor.

10 (3) The court shall have the discretion to recall the sentence and  
11 commitment previously ordered and to resentence the defendant  
12 in the same manner as if the defendant had not previously been  
13 sentenced, provided that the new sentence, if any, is not greater  
14 than the initial sentence. The discretion of the court shall be  
15 exercised in consideration of the criteria in paragraph (2). Victims,  
16 or victim family members if the victim is deceased, shall be notified  
17 of the resentencing hearing and shall retain their rights to  
18 participate in the hearing.

19 (4) If the sentence is not recalled, the board shall make the  
20 determination mandated by subdivision (a) again when the  
21 defendant has been committed to the custody of the department  
22 for 15 years, 20 years, and 24 years. The final review shall be  
23 during the 24th year of the defendant's sentence.

24 (5) In addition to the criteria in paragraph (2), the court may  
25 consider any other criteria that the court deems relevant to its  
26 decision, so long as the court identifies them on the record,  
27 provides a statement of reasons for adopting them, and states why  
28 the defendant does or does not satisfy the criteria.

29 (6) This subdivision shall have retroactive application.

30 (f) (1) Notwithstanding any other law and consistent with  
31 paragraph (1) of subdivision (a), if the secretary or the Board of  
32 Parole Hearings or both determine that a prisoner satisfies the  
33 criteria set forth in paragraph (2), the secretary or the board may  
34 recommend to the court that the prisoner's sentence be recalled.

35 (2) The court shall have the discretion to resentence or recall if  
36 the court finds that the facts described in subparagraphs (A) and  
37 (B) or subparagraphs (B) and (C) exist:

38 (A) The prisoner is terminally ill with an incurable condition  
39 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the  
2 department.

3 (B) The conditions under which the prisoner would be released  
4 or receive treatment do not pose a threat to public safety.

5 (C) The prisoner is permanently medically incapacitated with  
6 a medical condition that renders him or her permanently unable  
7 to perform activities of basic daily living, and results in the prisoner  
8 requiring 24-hour total care, including, but not limited to, coma,  
9 persistent vegetative state, brain death, ventilator-dependency, loss  
10 of control of muscular or neurological function, and that  
11 incapacitation did not exist at the time of the original sentencing.

12 The Board of Parole Hearings shall make findings pursuant to  
13 this subdivision before making a recommendation for resentence  
14 or recall to the court. This subdivision does not apply to a prisoner  
15 sentenced to death or a term of life without the possibility of parole.

16 (3) Within 10 days of receipt of a positive recommendation by  
17 the secretary or the board, the court shall hold a hearing to consider  
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines  
20 that a prisoner has six months or less to live shall notify the chief  
21 medical officer of the prognosis. If the chief medical officer  
22 concurs with the prognosis, he or she shall notify the warden.  
23 Within 48 hours of receiving notification, the warden or the  
24 warden's representative shall notify the prisoner of the recall and  
25 resentencing procedures, and shall arrange for the prisoner to  
26 designate a family member or other outside agent to be notified  
27 as to the prisoner's medical condition and prognosis, and as to the  
28 recall and resentencing procedures. If the inmate is deemed  
29 mentally unfit, the warden or the warden's representative shall  
30 contact the inmate's emergency contact and provide the information  
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the  
33 prisoner and his or her family member, agent, or emergency  
34 contact, as described in paragraph (4), updated information  
35 throughout the recall and resentencing process with regard to the  
36 prisoner's medical condition and the status of the prisoner's recall  
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the  
39 prisoner or his or her family member or designee may  
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the  
2 secretary. Upon receipt of the request, the chief medical officer  
3 and the warden or the warden's representative shall follow the  
4 procedures described in paragraph (4). If the secretary determines  
5 that the prisoner satisfies the criteria set forth in paragraph (2), the  
6 secretary or board may recommend to the court that the prisoner's  
7 sentence be recalled. The secretary shall submit a recommendation  
8 for release within 30 days in the case of inmates sentenced to  
9 determinate terms and, in the case of inmates sentenced to  
10 indeterminate terms, the secretary shall make a recommendation  
11 to the Board of Parole Hearings with respect to the inmates who  
12 have applied under this section. The board shall consider this  
13 information and make an independent judgment pursuant to  
14 paragraph (2) and make findings related thereto before rejecting  
15 the request or making a recommendation to the court. This action  
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by  
18 the secretary or the Board of Parole Hearings shall include one or  
19 more medical evaluations, a postrelease plan, and findings pursuant  
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge  
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,  
24 the prisoner shall be released by the department within 48 hours  
25 of receipt of the court's order, unless a longer time period is agreed  
26 to by the inmate. At the time of release, the warden or the warden's  
27 representative shall ensure that the prisoner has each of the  
28 following in his or her possession: a discharge medical summary,  
29 full medical records, state identification, parole medications, and  
30 all property belonging to the prisoner. After discharge, any  
31 additional records shall be sent to the prisoner's forwarding  
32 address.

33 (10) The secretary shall issue a directive to medical and  
34 correctional staff employed by the department that details the  
35 guidelines and procedures for initiating a recall and resentencing  
36 procedure. The directive shall clearly state that any prisoner who  
37 is given a prognosis of six months or less to live is eligible for  
38 recall and resentencing consideration, and that recall and  
39 resentencing procedures shall be initiated upon that prognosis.

1 (g) Any sentence imposed under this article shall be subject to  
2 the provisions of Sections 3000 and 3057 and any other applicable  
3 provisions of law.

4 (h) A sentence to state prison for a determinate term for which  
5 only one term is specified, is a sentence to state prison under this  
6 section.

7 (i) This section shall become operative on January 1, 2011.

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